IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA:

CWP.No.224 of 2002.

Date of Decision :22.3.2007..

Gambhir Chand. …Petitioner.

Versus:

Sainik School Society and another. …Respondents.

Coram:

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1]

For the petitioner: Mr.Chandernarayan Singh, Advocate.

For Respondents. Mr.Ravinder Thakur, Central Govt. Counsel.

Sanjay Karol, J (Oral).

This judgment is being dictated in open Court in the presence of the learned counsel for the parties.

The petitioner herein has assailed the order dated 7.1.2000 (Annexure:P-4), letter dated 23rd December, 2000 (Annexure:P-11) and letter dated 5th March, 2001 (Annexure:P-14) whereby petitioner has been directed to be

---

[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

compulsorily retired and salary paid to him is sought to be recovered.

On a complaint filed by one Smt. Veena Devi to the effect that the petitioner had wrongly disclosed his date of birth at the time of his induction into service with the respondents, a show cause notice dated 24th November, 1999 was issued to the petitioner. As per the complaint, the actual date of birth of the petitioner is 28.3.1937 whereas he has wrongly recorded his date of birth as 28.3.1947 and that he has deliberately misled the school authority by submitting a false certificate. In response thereto petitioner stated that maternal grand parents, who were illiterate and rustic, at the time of his admission to school may have committed the mistake by wrongly recording his date of birth. Petitioner, however, offered himself for examination by the medical board suggesting that his actual date of birth is 1947 and not 1937 and that the date of birth might have got recorded un-intentionally by mentioning the wrong year. He also annexed a date of birth certificate showing the corrected date issued by the local Panchayat. Not being convinced of his explanation an inquiry against the petitioner was instituted and concluded. It is undisputed that the inquiry report has not been supplied to the petitioner. It is also undisputed that in terms of the Rules no notice to show cause/memorandum has been issued to the petitioner before imposition of any penalty. The authorities concerned without associating the petitioner in any means straightway passed an order dated 7th January,

2000 awarding the penalty of compulsory retirement after having found him guilty of charges framed and violation of the Conduct Rules 9.01(a) and 9.03(v). The petitioner's appeal is also summarily rejected in terms of order dated 23rd December, 2000 and the decision to recover the salary paid to him without any prior notice was conveyed in terms of order dated 25th March, 2001.

The learned counsel for the petitioner has referred to the various provisions of the Sainik Schools Society Rules and Regulations to contend that there is serious infraction of the rules apart from the violation of principles of natural justice. The orders are unreasoned and arbitrary, illegal and unjust. He has relied upon the decisions of the apex Court namely: ***Managing Director, ECIL, Hyderabad and others Vs. B.Karunakar and others*** (1993) 4 Supreme Court Cases 727, ***A.Sudhakar Vs. Postmaster General, Hyderabad and another*** (2006) 4 Supreme Court Cases 348, ***M.V.Bijlani vs. Union of India and others*** (2006) 5 Supreme Court Cases 88 , ***Lav Nigam Vs. Chairman & MD. ITI Ltd. and another*** (2006) 9 Supreme Court Cases 440 and ***Narinder Mohan Arya Vs. United India Insurance Co. Ltd. and others*** (2006) 4 Supreme Court Cases 713.

The learned counsel appearing for the respondents has also relied upon ***Managing Director, ECIL, Hyderabad, etc. etc. Vs. B.Karunakar etc. etc***. (supra) to contend that even though no inquiry report has been supplied to the petitioner, however, no serious prejudice is shown to

have been caused to him and consequently the writ petition should be dismissed. I propose to decide as under.

Rules for the Sainik Schools Rules and Regulations (hereinafter referred to as `the Rules') lays down the procedure for conducting disciplinary proceedings against its employees. Chapter-10 deals with manner, method and procedure for imposition of penalty. The relevant rules for adjudication of the controversy in issue are reproduced as under:

> "10.03 Before imposing the penalties of removal or dismissal from service, the Principal will obtain prior written approval for the proposed action from the Chairman, L.B.A. and for this purpose submit full facts of the case together with the justification for his recommended action against the errant employee. An employee on probation will not, however, have the right to appeal against the orders terminating his services, because such an action is not in the nature of a recognized penalty and successful completion of probation period to the satisfaction of the Principal is obligatory.
>
> 10.09 On receipt of the inquiry report, the Principal shall record his agreement or disagreement with the findings of the inquiry on each article of the charges referred to the inquiry, giving reasons where ever he disagrees with the

findings. The principal can remit the case again to the Inquiry for further inquiry, if in his opinion such further inquiry is necessary in certain aspects not unrevealed during the inquiry already held.

10.10 Based on the opinion of the Inquiry as accepted by the Principal, the employee shall be given one more chance to submit a written statement of defence by serving him with a show cause notice containing the statement of findings of the Inquiry. He will be required to submit a reply within a specified time which shall not be less than 10 days.

10.11 After considering the written reply from the employee and taking into account all other relevant evidence the Principal shall determine what penalty, if any, should be imposed on him. He may make the order as he deems fit, and serve it on the employee except the penalty of compulsory retirement. Removal from service and dismissal from service and entries in respect of the penalty imposed will be made in the service records of the concerned employee. In case of compulsory retirement, removal from service or dismissal from service, the Principal shall take prior approval of the chairman L.B.A."

In ***Managing Director ECIL's*** case (supra), it has been clearly held that whether prejudice has been caused to the employee or not on account of denial of the inquiry report has to be considered in the facts and circumstances of each case and denial of the report of the enquiry officer is a denial of reasonable opportunity and a breach of the principles of natural justice Statutory rules, if any, which deny the report to the employee are against the principles of natural justice and, therefore, invalid. The delinquent employee will, therefore, be entitled to a copy of the report even if the statutory rules do not permit the furnishing of the report or are silent on the subject.

In the present case, the petitioner has not admitted the fact that he was born in the year 1937. Therefore the fact that the petitioner was born in the year 1937 itself is disputed. In fact his specific case is that there is mistake in recording the correct date of birth and he is open for examination before the Medical Board. He had submitted the certificate issued by the Panchayat wherein date of birth had been corrected. The material taken on record and relied upon by the Inquiry Officer during the course of the proceedings, in my view, ought to have supplied to the petitioner along with the finding of the Inquiry Officer which presumably is against him. The fact that the inquiry report has not been supplied to the petitioner nor any show cause notice was served before imposition of any penalty is in clear cut violation of rules 10.07, 10.09 and 10.10 as has been

mentioned by the petitioner in his petition para-22(a), (h) and (i). There is only vague denial in reply thereto. In my view, the petitioner was duly entitled to the inquiry report before any penalty could have been imposed upon him. There is nothing on record to show as to whether the Principal had agreed with the findings of the Inquiry Officer and there is nothing on record to show that the Principal had taken prior approval of the Chairman of the L.B.A. before imposition of major penalty.

The impugned orders are cryptic and unreasoned. The reasons ought to have been assigned and/or supplied while passing the order. During the course of hearing, nothing has been produced to show that the reasons are contained in the files. Before quantifying the demand for recovery, no notice was issued to the petitioner.

In ***Chairman and Managing Director, United Commercial Bank and others Vs. P.C.Kakkar*** (2003) 4 Supreme Court Cases 364 while dealing with the unreasoned orders, the Court held:

> "Even in respect of administrative orders Lord Denning, M.R. in Breen V. Amalgamated Engg. Union observed: (All ER p. 1154) "The giving of reasons is one of the fundamentals of good administration." In Alexander Machinery (Dudley) Ltd. v. Crabtree it was observed: "Failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at". Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the courts to perform their appellate function or

> exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance."

For the aforesaid reasons, I set aside the order dated 7th January,2000(Annexure-P-4), order dated 23rd December, 2000 (Annexure:P-11) and letter dated 5th March, 2001 (Annexure:P-14) . It will be open for the respondents to complete the departmental proceedings against the petitioner by furnishing him an inquiry report and complying with the rules. It is also open for the respondents to take all consequential actions in accordance with law. It is clarified that I have not decided the merits of the charges and allegations of misconduct against the petitioner. Inquiry proceedings if continued shall be completed within a period of four months from today.

No other point was urged by the learned counsel for the parties.

The writ petition is accordingly allowed in the aforesaid terms. There shall be no order as to costs.

(Sanjay Karol),
Judge.

March 22, 2007(R)